

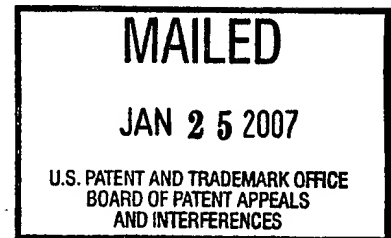
The opinion in support of the decision being entered today
was *not* written for publication in and is *not* binding
precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAURIE E. GATHMAN and JACK E. HAKEN

Appeal No. 2007-0126
Application No. 09/970,910
Technology Center 1700



ON BRIEF

Decided: January 25, 2007

Before GROSS, HORNER, and FETTING, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1 through 28, which are all of the claims pending in this application.

We AFFIRM.

BACKGROUND

The appellants' invention relates to public-facility electronic ticket control systems and, more specifically, to a system and method for permitting the exchange of electronic tickets between patrons of the facility using virtual ticket devices. (Spec. 3). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method of exchanging tickets electronically, comprising:
providing an electronic ticket control system for issuing virtual tickets to public-facility patrons through virtual ticket devices;
receiving virtual ticket exchange requests from a plurality of virtual ticket devices;
storing the exchange requests in an exchange request database;
analyzing the exchange requests to determine if any are eligible for exchange;
sending an exchange notification message to the virtual ticket devices associated with at least one eligible exchange;
receiving an exchange confirmation message from the eligible virtual ticket devices associated with the at least one exchange; and
updating the virtual tickets when all virtual ticket devices associated with the at least one exchange respond affirmatively.

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Senga	US 2003/0135440 A1	Jul. 17, 2003 (Feb. 20, 2001)
Nakfoor	US 6,496,809 B1	Dec. 17, 2002 (Jun. 9, 2000)
Walker	US 5,794,207	Aug. 11, 1998
Peters	US 5,769,269	Jun. 23, 1998

REJECTIONS

Claims 1 through 16, 18 through 24, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as obvious over Nakfoor and Walker.

Claims 17, 25 and 28 stand rejected under 35 U.S.C. § 103(a) as obvious over Nakfoor, Walker, Peters and Senga.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (mailed Jul. 3, 2006) for the reasoning in support of the rejection, and to appellants' brief (filed Jul. 15, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1 through 16, 18 through 24, 26 and 27 rejected under 35 U.S.C. § 103(a) as obvious over Nakfoor and Walker.

We note that the appellants argue these claims as a group. Accordingly, we select claim 1 as representative of the group.

The examiner has applied Nakfoor to the claimed subject matter as showing exchange of tickets in an automated system. Nakfoor is silent as to messages confirming the exchange, and the examiner has applied Walker to show the notoriety of such confirming messages.

The appellants argue that Nakfoor sells rather than exchanges tickets.

While Nakfoor teaches that tickets may be traded in the secondary market using an exchange-type format, the description of the exchange-type format makes it clear that it is a process like that used at the New York Stock Exchange for arriving at an agreed sale price between buyer and seller. In the exchange-type format described in the Nakfoor reference, sellers advertise an 'ask' price that they want to receive for their tickets, while buyers advertise a 'bid' price that they are willing to pay for tickets. When any buyer's bid price meets or exceeds a seller's ask price, the system of Nakfoor consummates the sale of that seller's tickets to that buyer. (Nakfoor, Column 4, Lines 25-34). In short, the Nakfoor reference teaches a method and system for selling tickets.

(Br. 8-9).

The examiner responds that the claim limitation “exchanging” is sufficiently broad to encompass selling. (Answer 6.) We presume the examiner means that the claim does not specify what the tickets are exchanged for, and therefore may be exchanged for cash, i.e. a sale. We agree that the claim is sufficiently broad to encompass this construction in that the specification states that “tickets may be exchanged for consideration other than other electronic tickets, including money . . .” (Spec 8). Therefore, we find the appellants’ arguments to be unpersuasive.

The appellants argue that Nakfoor does not allow exchange after the event starts, as their invention does.

Furthermore, unlike the Nakfoor method, the method of the present invention is capable of operating after the ticketed event has begun. For example, the specification of the patent application states "The facility operator may use the access points to communicate information to the virtual ticket devices about available seating upgrades. These could be based on the real time location of the customer. For example, an access point may transmit to the virtual ticket device the message: 'Two seats are available in the section in front of you. Would you like to move there for an additional \$10?'" (Specification, Page 16, Lines 10-16).

The Nakfoor method ceases to operate after the ticket buyer enters the event.

(Br. 9).

This argument fails to address any limitation in this claim. We note that there is no temporal attribute within the claim limitation that narrows the time span during which such patrons must be associated with a public-facility, nor is there any spatial attribute requiring such patrons to be within a public-facility. By way of analogy, we note that many public television patrons never set foot in a public television station or appear on public television. We note, in particular, that the very act of obtaining tickets for a public-facility venue is sufficient to characterize

the party obtaining such tickets as public-facility patrons, much as writing a check to a public television station is sufficient to characterize a donor as a public television patron. Therefore, we find the appellants' arguments to be unpersuasive.

The appellants argue that the exchange in Nakfoor is not to public-facility patrons.

The Appellants' invention is directed to a system and method for issuing virtual tickets to public-facility patrons through virtual ticket devices. The Appellants respectfully traverse the Examiner's characterization of the secondary market purchasers of Nakfoor as public-facility patrons. For the reasons described above, after the secondary market purchasers of Nakfoor have entered the public facility 100 (and have thereby become public-facility patrons), the Nakfoor method is no longer operable. In other words, the Nakfoor method is operable only for secondary market purchasers who have not yet become public-facility patrons. The Nakfoor reference does not disclose, suggest or even hint at the concept of issuing virtual tickets to public-facility patrons (i.e., purchasers of tickets who have physically entered the public facility 100).

(Br. 10).

The examiner responds to this argument in the same context as the previous argument and we, similarly, agree with the examiner's construction and conclusion that the claim is sufficiently broad to encompass purchasers of public-facility tickets. Therefore, we find the appellants' arguments to be unpersuasive.

The appellants argue that Walker may not be combined with Nakfoor for the reasons articulated by the examiner because the motivational teachings asserted by the examiner to be present in Walker (legally binding steps and, with respect to claims 24, 26 and 27, a barter environment) are too broad to form a prima facie case of obviousness. (Br. 11-14).

The examiner essentially responds that Walker demonstrates the notoriety of both transmission of affirming messages and barter, such that a person of ordinary skill in the art would have immediately envisaged such activities as additional and alternative steps to the processes set forth in Nakfoor. We agree that both the use of transmission of affirming messages and barter are notoriously well known, for which Walker provides evidence. And we further note that Walker, on its face, in its title (Method and Apparatus for a Cryptographically Assisted Commercial Network System Designed to Facilitate Buyer-Driven Conditional Purchase Offers), suggests its use in any buyer driven conditional purchase offer such as that in Nakfoor. Once a person of ordinary skill in the art looked to Walker, to provide the security that Walker suggests is appropriate for systems such as in Nakfoor, the portion of Walker suggesting to a person of ordinary skill in the art the use of barter, in col. 30, in some embodiments, would have fairly suggested substitution of second tickets for cash as the medium of exchange for the first tickets. Therefore, we find the appellants' arguments to be unpersuasive.

As to claim 24, the appellants also argue that neither reference describes brokering an exchange at a public facility. The appellants are apparently noting with particularity the distinction between this claim limitation and the limitation in claim 1 of “to public-facility patrons.” We note that the limitation “at a public facility” is not a limitation of the step that is performed, but only of the location where the step is performed. “[T]he steps comprising the process are the essential features for consideration in determining the right of appellants to a patent – not the particular material to which the process is applied nor the particular substance obtained by its application.” *In re Fahrni*, 41 C.C.P.A. 768, 771, 210 F.2d 302, 303, 100 U.S.P.Q. (BNA) 388, 390 (C.C.P.A. 1954). The location of a step has even less bearing on a process step than the input and output materials. The limitation of “at a public facility” is a mere field of use limitation, and deserves no patentable weight in a process claim.

We next note that, were any such weight to be given this limitation, Nakfoor suggests that the public facility might provide the exchange capability in the assignments of user roles in col. 5 lines 50-52, which include venue management. Certainly, a person of ordinary skill in the art would have envisaged the facility where an event is to occur as among the set of locations ticket holders would likely be when exchanging tickets, i.e. it is an immediately envisaged species of the genus of transaction locations, and there is nothing particularly unusual about the result of the claimed steps irrespective of where the parties are located.

Accordingly we sustain the examiner's rejection of claims 1 through 16, 18 through 24, 26 and 27 under 35 U.S.C. § 103(a) as obvious over Nakfoor and Walker.

Claims 17, 25 and 28 rejected under 35 U.S.C. § 103(a) as obvious over Nakfoor, Walker, Peters and Senga.

Claims 17 and 25 are dependent claims against which the examiner applied Peters to show presenting seat views, and claim 28 is a dependent claim against which the examiner applied Senga to show prioritizing the exchange.

The appellants argue there is no motivation to combine Peters and Senga with Nakfoor. (Br. 15-17). We note that Senga provides such motivation as

in facilitating a purchase wisher to get a chance of purchasing a commodity *at his desired lowest possible price* and also in facilitating a seller to get a chance of selling the same commodity as much as possible

(para. 0009)) (emphasis added)

and Peters provides such motivation as

to provide a vending machine for dispensing debit cards, as well as tickets for entertainment events available from a computerized ticket inventory; the vending machine having the further capability of *affording user selection of ticket seat locations based on video portrayals of actual views* of entertainment events from the available seat locations

(Col. 3 lines 18-24) (emphasis added).

As to the specific limitations, Peters describes the seat views of claims 17 and 25 as

The customer is then asked whether he/she desires to see one or more representative views from the selected seat location to center stage, home plate, center court, etc., as appropriate for the selected event (step 1320). If the customer makes a "yes" keystroke, interface

computer 74 commands video computer 36 to retrieve from a database stored in CD ROM 44 or hard drive 38 video data of the representative view (step 1322).

(Col. 12 line 67-col. 13 line 7).

Senga describes prioritizing exchanges as

The mediator roughly divides the bid-responding conditions into commodity-related, purchase-related, and sales-related conditions and gives them priorities in an descending amount order to the purchase desired conditions, in an ascending amount order to the sales desired conditions, and a time-lapsing order of the bid-responding time for the same amounts so as to provide a transaction conclusion order . . .

(Para. 50).

We also note that the appellants indicate that such prioritization may be based on order of receipt (Spec 34) and that a person of ordinary skill in the art would have known that the general default service policy of first-in first out (aka FIFO) is just such a prioritization based on receipt.

Therefore, we find the appellants' arguments to be unpersuasive. Accordingly we sustain the examiner's rejection of claims 17, 25 and 28 under 35 U.S.C. § 103(a) as obvious over Nakfoor, Walker, Peters and Senga.

CONCLUSION

To summarize,

- The rejection of claims 1 through 16, 18 through 24, 26 and 27 under 35 U.S.C. § 103(a) as obvious over Nakfoor and Walker is sustained.
- The rejection of claims 17, 25 and 28 under 35 U.S.C. § 103(a) as obvious over Nakfoor, Walker, Peters and Senga is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Anita Peltman Gross

ANITA PELLMAN GROSS

Administrative Patent Judge

Linda E. Horner

LINDA E. HORNER

Administrative Patent Judge

Anton W. Fetting

ANTON W. FETTING

Administrative Patent Judge

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